

P. ANDREW McSTAY, JR., OSB 033997

andymcstay@dwt.com

WILLIAM D. MINER, OSB 043636

billminer@dwt.com

DAVIS WRIGHT TREMAINE LLP

560 SW 10th Avenue, Suite 700

Portland, OR 97205

Telephone: (503) 241-2300

MARCI A. ROBINSON LOWRY (*pro hac vice*)

m_lowry@abetterchildhood.org

ANASTASIA BENEDETTO (*pro hac vice*)

abenedetto@abetterchildhood.org

LINDSAY GUS (*pro hac vice*)

lgus@abetterchildhood.org

A BETTER CHILDHOOD

355 Lexington Avenue, Floor 16

New York, NY 10017

Tel: (646) 795-4456

Attorneys for Plaintiffs

Additional Counsel of Record Listed on

Signature Page

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

WYATT B., *et al.*,

Plaintiffs,

v.

TINA KOTEK, *et al.*,

Defendants.

Case No. 6:19-cv-00556

PLAINTIFFS' OBJECTIONS TO
DEFENDANTS' SUPPLEMENTAL LAY
WITNESS STATEMENTS

Plaintiffs hereby object to Defendants' Supplemental Lay Witness Statements (ECF 436) as follows:

I. GENERAL OBJECTIONS

A. Plaintiffs Reserve the Right to Raise Objections in Court, Based on Individual Questions and Answers

Plaintiffs cannot, in every instance, determine the nature, circumstances, and basis for testimony. Generally, Plaintiffs reserve the right to object at trial on the basis of any permissible grounds for objection. Plaintiffs cannot determine from the brief descriptors, for example, whether the witness has personal knowledge of the matter discussed, or whether the witness would seek to present an expert opinion rather than a lay opinion.

B. Plaintiffs Reserve the Right to Object to and Move to Strike Testimony from Witnesses Who Previously Expressed Inability to Answer at Deposition

Plaintiffs would also note that, as presented, the witness statements indicate that some witnesses, who repeatedly stated at a deposition that they were unable to speak in generalities about conditions or circumstances within the foster care system, now appear prepared to testify in generalities about that same system at trial. Plaintiffs reserve the right to move to strike testimony from witnesses, where the witness had previously expressed an inability to testify on that topic in deposition, including where the witness had expressed an inability to speak in the abstract.

C. Plaintiffs Reserve the Right to Supplement Their Trial Exhibits with Appropriate Documents to Impeach Witnesses

Defendants have introduced a 265-page summary of witness statements, broaching a wide variety of topics and introducing dozens of fact witnesses. Many of the issues raised by Defendants in their proposed witness statements can be impeached with relevant documents. Plaintiffs will appropriately supplement their trial exhibits with exhibits.

II. SPECIFIC OBJECTIONS

WITNESS: FRANCIS MAHER	
Page	Objections
5-6 - intends to testify about recent legislation and impacts on child-caring agencies	Legal conclusion, unnoticed expert testimony, improper lay witness testimony, lack of personal knowledge and speculation as to impacts on agencies other than his own, hearsay.

WITNESS: BECKY SMALLWOOD	
Page	Objections
8-9 - intends to testify about disability assessments	Unnoticed expert testimony to the extent she is opining about disability diagnoses.

WITNESS: V.P.	
Page	Objections
9 – “various supports and services they received to help transition out of the care of Child Welfare” and “overall experience” with the child welfare system	The description of the proposed testimony is vague and insufficiently detailed. Plaintiffs further object to Defendants’ communication with V.P., a member of the plaintiff class, without notice to and authorization by Plaintiffs.

DATED this 3rd day of May, 2024.

DAVIS WRIGHT TREMAINE LLP

By: s/P. Andrew McStay, Jr.

P. Andrew McStay, Jr. OSB 033997
 andymcstay@dwt.com
 William D. Miner, OSB 043636
 billminer@dwt.com
 560 SW 10th Avenue, Suite 700
 Portland, OR 97205
 Tel: (503) 241-2300

A BETTER CHILDHOOD

Marcia Robinson Lowry (*pro hac vice*)
 mlowry@abetterchildhood.org
 Anastasia Benedetto (*pro hac vice*)
 abenedetto@abetterchildhood.org
 Lindsay Gus (*pro hac vice*)
 lgus@abetterchildhood.org

355 Lexington Avenue, Floor 16
New York, NY 10017
Tel: (646) 795-4456

DISABILITY RIGHTS OREGON

Emily Cooper, OSB 182254
ecooper@droregon.org
Thomas Stenson, OSB 152894
tstenson@droregon.org
511 SW 10th Avenue, Suite 200
Portland OR 97205
Tel: (503) 243-2081

RIZZO BOSWORTH ERAUT PC

Steven Rizzo, OSB 840853
srizzo@rizzopc.com
Mary D. Skjelset, OSB 075840
mskjelset@rizzopc.com
1300 SW 6th Avenue, Suite 330
Portland, OR 97201
Tel: (503) 229-1819

Attorneys for Plaintiffs